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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
FCC 94-100)
FURTHER NOTICE OF PROPOSED RULE MAKING)
Concerning GN Docket No. 93-252)
Regulatory Treatment of Mobile Services)

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COMMENTS RE FURTHER NOTICE OF PROPOSED RULE MAKING

Due: June 20, 1994

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Comparison of Reclassified Part 90 Services and
"Substantially Similar" Common Carrier Services

General Comments:

It would be in the best interest of the public if the Commission elaborated on the statutory definition applied to "commercial mobile" radio service (CMRS), i.e., "they are engaged in offering for-profit interconnected service to the public or a substantial portion of the public". I am concerned with the further definition of "interconnected service" and "a substantial portion of the public".

Without such definition an excessive amount of ambiguity exists. For example, by applying "for-profit interconnected service" at its face value, one would be forced to adjudicate that a cellular carrier, a local specialized mobile radio (SMR) licensee with a single PSTN connection and a fully interconnected enhanced (SMR) or (ESMR) like Nextel are all "substantially similar" and as such must be regulated equally.

What constitutes "a substantial portion of the public" ? What percentage of the population base within a licensee's service area represents "a substantial portion of the public" ? Indeed, what percentage of the aforementioned population represent even potential subscribers of the service(s) that may be offered under a license. Service offerings of cellular and paging licensees are mass marketable, while the basic dispatch offerings of a 220-222 MHz SMR or 460 MHz mobile relay licensee address only a niche market. All of these offerings benefit the public interest, either directly or indirectly, yet their marketing potential and loading capacities are dramatically disproportioned with the first totaling in the tens of thousands, the later in mere hundreds of units.

Most people comprehend the enormous investment required for cellular or paging infrastructure, yet the equally large returns are often overlooked. If the Commission believes as I do, that such niche markets as basic dispatch are equally essential to serve the public interest, it must be prepared to recognize the substantial investments required for its infrastructure with disproportionately lower returns. Investment capital is being steered toward the high profile licensees in paging, cellular and ESMR cellular look-alikes. If the unique needs of the dispatch user are to be address, the Commission must rule in such a fashion that the desired regulatory parity does not further diminish the viability of such licenses and preclude licensees from securing the investment capital that will be required to build out an enhanced dispatch infrastructure.

Specialized Mobile Radio

Based on the evidence to date, it appears that there is no longer any generic definition that can be applied to the extensive array of facilities currently living under the SMR banner. At one extreme you have the locally owned and operated five (5) to twenty (20) channel trunked SMR system providing basic dispatch service on the local level. At the other extreme you have the fully interconnected enhanced SMR using thousands of channels with microcell TDMA technology over extensive portions of the Nation and looking more like a digital cellular carrier than any currently licensed cellular carrier. In between these two extremes lives every possible permutation.

Any SMR licensee which opts to fully interconnect to the PSTN and deploys its' authorized channels in contiguous form over large segments of the land in such a manner as to resemble any configuration utilized by a licensed cellular carrier and who primarily supplies interconnect service to individuals rather than a combination of services including basic all call and group call dispatch should be deemed as being in competition with, and substantially similar to a cellular licensee and thus regulated in similar fashion.

In the case of any SMR licensee who deploys its' authorized channels on a more local basis, fully interconnects those channels to the PSTN and provides primarily interconnect service to individuals rather than basic all call and group call dispatch would appear to resemble a current day version of an IMTS carrier and would undoubtedly compete for similar markets. Regulations for this form of SMR operation should be similar to those applied to IMTS licensees.

SMR licensees who also deploy their channels on a local basis and provide only limited interconnection (potentially no more than one (1) PSTN interconnection per five (5) channels deployed) to subscribers using half-duplex equipment do not appear to compete with either cellular or IMTS carriers. This appears to be a mere ancillary offering for the benefit of their basic dispatch subscriber. If this limited level of interconnection were to be considered sufficient to categorize this form of SMR operation as similar to either ESMR, IMTS or cellular, I believe the licensee would discontinue any interconnect operation rather than incur increased regulation. This would be to the detriment of the licensee's dispatch subscribers. Experience shows that subscribers needing heavy interconnect will opt to procure separate dispatch and cellular service. Therefore, I believe this form should remain as PMRS.

220-222 MHz Service

Due to the uniqueness of this allocation; 5 KHz channel bandwidth, limited spectrum available, current inability to operate full-duplex and current lack of portable equipment, it is not envisioned that this form of SMR could equate any current Part 22 mobile service. Current thinking envisions the potential of providing limited ancillary interconnect as discussed relative to traditional SMR operation previously. In this regard I question whether the service should be reclassified as CMRS at all.

On the other hand, the 220-222 MHz allocation lends itself well to deployment as a wide-area dispatch system using a macrocell deployment configuration the Commission would need to approve. I do not believe that a comparable configuration exists even at PCS when one considers the discrepancies that would exist in available spectrum, deployment configurations, etc. I am not convinced that they could compete for the same subscriber base since, in my mind, it would be difficult if not impossible to cost effectively covering the suburban and rural areas between metropolitan areas with the higher frequency allocations used by PCS.

If there really is nothing found to be substantially similar to the wide-area dispatch potential the 220-222 MHz allocation provides, the Commission may need to rule on these 220-222 MHz issues separately. I believe it would serve the public interest and convenience for the Commission to develop rules and/or consider requests for waivers that would permit this spectrum to be configured so as to provide the greatest benefit to the public.

As the Commission knows all too well, deployment of this valuable resource has seen countless delays and I am concerned there are those which seek to further delay its' implementation with requests for unnecessarily lengthy construction schedule. Although I certainly concur with the basic premise that anything worth doing is worth doing right, we must remember that even the absolute best product can have no perceived value if it is never brought to market.

Business Radio

I concur with the Commission's assessment of this category and basically do not find any substantial similarity to those services provided by Part 22 licensees.

Paging

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I do not have a sufficient comprehension of the similarities between the paging carriers to comment extensively however, I would like to call the Commissions attention to the report that ESMR's like Nextel have announced their intention to provide paging services over their infrastructure. This may raise concerns relative to the issue of bundling services thereby holding a competitive advantage since paging allocations are not paired, paging licensees are not going to be able to offer mobile telephone service with their pagers.

Channel Assignment and Service Area

SMR

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A combination of subscriber demand and cost of technology appears to be the prime driving forces behind the irrefutable trend to wide-area coverage. In general, we have become a very mobile society that demands a lot from technology, including that it be available wherever we go, whenever we go there. Businesses in have been growing by acquisition thereby constantly operating over ever-growing services areas. The demand is on from the subscribing public that we be there for them.

Additionally, new technology usually has high costs of hardware, construction and operation associated with it. In order to bring these technologies to the subscriber cost effectively, the economies of scale must be brought to bear. This is not difficult when your offering is marketable to a high percentage of the population base, such as cellular or paging. As discussed previously under the "substantially similar" section, I believe a fully interconnected, wide-area ESMR is substantially similar to cellular service and should be regulated as such.

I see value in the development of alternative channel assignment rules to permit the licensing of wide-area, multi-channel service in two categories. The wide-area interconnected ESMR and the wide-area dispatch ESMR. Definitive construction schedules should be encompassed to insure timely delivery of benefit to the public on a well thought-out, planned execution basis. As pointed out, this may now be a mute point at current 800 MHz allocations, since most of the spectrum involved has now been acquired by those operating under rules waivers.

It is not only difficult to assess whether 220 MHz service will be competitive to narrowband PCS, but whether or not narrowband PCS will be competitive to 220 MHz service. As one of the few individuals in the entire country who has actually constructed a multiple site 220 MHz network, I find it hard to imagine a great similarity between 220 and narrowband PCS service.

In my own mind, I am convinced that 220 service can, and should, fill an existing void by supplying low cost, wide-area dispatch services primarily targeted at the small business sector which can benefit most from this service. As previously discussed, such users are, with an increasing regularity, demanding service over more extensive service areas with greater user friendliness.

To provide this kind of service will necessitate the aggregation of substantial numbers of channels in numerous markets throughout the service region to be covered. In order to insure that coverage is not limited to high density metropolitan areas, rules should mandate minimum coverage percentages of the service region requested then permit the flexible deployment of channels, with appropriate co-channel interference consideration, to provide best utilization of the spectrum.

The SunCom request appears to simply target some seventy plus major metropolitan areas. This plan fails to provide anything beyond "me too" service in markets that, in many cases, have an abundance to even an over abundance of such capability already existing. The public is not interested in more of the same. They are looking for technology and spectrum to be applied in a manner that provides transparent user friendly operation over the entire region their business operates in, with enough capacity and flexibility to address both short and long term needs.

Additionally, SunCom requests an eight (8) year construction schedule in order to deal with "system complexities and coordinate construction activities". Although I concur that construction should be well thought out and coordinated, I cannot understand the need for anything beyond a three (3) year construction schedule. Such an extended construction schedule might only further delay the deployment of this allocation.

In order to insure that competition is not unduly stifled, it would seem reasonable to limit the aggregation of channels to not more than one-half the total authorized in any given market. As always, provisions should be made to accommodate requests for additional capacity based upon a licensee having met loading criteria on existing allocations or with the display, to the satisfaction of the Commission, of other specific need dictum.

Co-Channel Interference Protection

As indicated by the Commission, this is an extremely complex issue. I am of the opinion that in the short term, only those licenses issued on an exclusive basis could be utilized in the Commission-defined service area approach where only the service boundaries between providers must be addressed to substantial degree. Those assignments which are non-exclusive and thus currently service areas are station defined must, in the short term continue in that mode. However, appropriate changes in mandated specification compliance could be implemented at the time an authorization comes up for renewal as a compromise measure to begin addressing the long term interests of spectrum management.

Emission Masks

With the ever growing use of the spectrum in a land with too few transmitter sites, strict emission standards should be viewed as mandatory and not subject to debate. Even where no adjacent channels are assigned to other licensees today, that could change at some future time and the problem would return to haunt us.

Antenna Height and Transmitter Power Limits

As stated previously, I find the fully interconnected ESMR licensee which has acquired sufficient channels to operate similar to cellular to be substantially similar and therefore should be required to comply with similar power limits. If cellular power limits were amended to permit greater flexibility within the interior and adjacent channel concerns permit, then parity could continue.

Also as stated previously, I am not of the opinion that 220 MHz service is substantially the same as any existing Part 22 service, thus the current rules should stand.

The power levels of cellular like ESMR operation should be required to coincide with those the commission has established for cellular licensees. I concur the Commission should apply the 1992 IEEE/ANSI RF radiation standards to all CMRS and PMRS mobiles as proposed.

Operational Rules

Construction Period and Coverage Requirements

Indeed there is no good justification for supporting different construction period for Part 22 and Part 90 rules and therefore I support the Commission's proposal to adopt a uniform 12 month construction period and the associated proposal to require provision of service to at least two parties unaffiliated with the license at the end of the construction period.

Regarding wide-area SMR systems, I believe that allowing the licensee to self designate and define their own service areas that would then be subject to a five-year build-out deadline with redefinition of the service area based on actual construction with unserved portions of the licensee's original area reclaimed by the Commission for relicensing provides the greatest flexibility and should be considered with the addition of some reasonable benchmarks before term and some requirement to meet the Clinton administration's goal of providing access to communications infrastructure throughout the country not merely in the major metropolitan markets.

Loading Requirements

First, I agree with the assessment that loading requirements have failed to accomplish the desired result. The use of service area coverage requirements potential stands a better chance of succeeding although I would inquire into the Commission's thoughts on how that coverage would be verified.

The "40-mile rule" fails to address terrain consideration that may mandate the addition of facilities in under 40-miles to provide requisite coverage even with conventional SMR systems. Wide-area systems simply require more latitude in their configuration to compete with broadband services. I would modify the rule to better address real world situations encountered by traditional SMR licensees and eliminate it for wide-area licensees.

The Commission should move to eliminate the automatic cancellation element of the SMR loading rules on the basis that it has outlived its' usefulness.

Station Identification =====

With the continued increase in interference of all types; adjacent channel, co-channel and intermodulation, I would prefer to see the Commission mandate the periodic automatic transmission of call signs digitally as is currently permitted under Part 90. This would serve as an invaluable tool in delineating the source of an interfering signal. Additionally, I find that those licensees who have permitted me to install automatic station identification equipment on their facilities pay more attention to proper adherence to the Commission's rules and regulations.

Equal Employment Opportunities =====

Although I appreciate the Commission's desire to be consistent here, I suspect that this will represent a substantial burden upon many small business that hold Part 90 licenses being reclassified to CMRS. Perhaps an increase from 16 to 25 employees or some other criteria might aid the situation. Additionally, I would strongly recommend that the Commission staff prepare an informational package which the newly reclassified CMRS licensee can use to aid in complying with this segment of the rules.